

## **REMARKS**

Claims 1-23 are pending. Claims 6 and 8-9 have been withdrawn. Claims 1, 7, 11, 16 and 20-23 have been amended. Claim 19 has been canceled. Claim 7 has been amended to specify that “\*” represents other monomeric units of the subject polymer; support for this amendment can be found throughout the application, such as on page 41, lines 30-31. Claim 11 has been amended to remove “or more” from the definition of x and y; and claims 20-22 have been amended to correct their dependency in light of the cancellation of claim 19. The amendments to claims 1, 16 and 23 are discussed in detail below. No new matter has been added.

Importantly, the amendments and claim cancellations made herein should not be construed to be an acquiescence to any of the claim rejections. Rather, these actions are being made solely to expedite the prosecution of the above-identified application. The Applicants expressly reserve the right to further prosecute the same or similar claims in subsequent patent applications claiming the benefit of priority to the instant application (35 USC § 120).

## **RESPONSE TO CLAIM OBJECTIONS UNDER 37 CFR 1.75(c)**

Claim 16 has been objected to under 37 CFR 1.75(c) as being of improper dependent form for failing to further limit the subject matter of the previous claim. Specifically, the Examiner asserts that claim 16 expands the limitation of claim 1 to a composition without the polymer. The Applicants respectfully traverse.

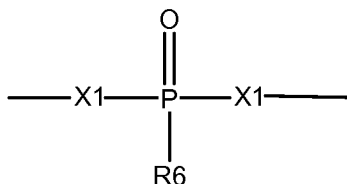
Claim 16 limits the antineoplastic agent to paclitaxel. In addition, the claim specifies that the paclitaxel is formulated in 50 percent CREMOPHOR EL and 50 percent dehydrated alcohol before it is combined with a biocompatible polymer to be used in the method of claim 1. Claim 16 has been amended to remove “and said antineoplastic agent without said polymer is” so as to emphasize that the claim requires a composition comprising both a polymer and paclitaxel formulated in 50 percent CREMOPHOR EL and 50 percent dehydrated alcohol.

In light of the amendments and argument presented above, the Applicants respectfully request the withdrawal of the objection to claim 16 under 37 CFR 1.75(c).

## RESPONSE TO CLAIM REJECTIONS UNDER 35 USC § 112¶2

Claims 1-5, 7 and 10-23 are rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicants regard as the invention. Specifically, the Examiner asserts that the recitation of “phosphorus-based linkages” in claims 1 and 23 render the pending claims indefinite because it is unclear how far removed a linkage can be from a phosphorus linkages and still be considered a phosphorous-based linkage. The Applicants respectfully traverse.

Solely to expedite prosecution, claims 1 and 23 have been amended to replace “wherein said polymer comprises phosphorous-based linkages” with claim language that requires that the following substructure be present at least a multiplicity of times in the backbone of the biocompatible polymer:



wherein, independently for each occurrence of such substructure: X1, each independently, represents -O- or -N(R5)-; R5 represents -H, aryl, alkenyl or alkyl; and R6 is alkyl, aralkyl, alkoxy, alkylthio, or alkylamino; and the substructure is responsible in part for biodegradability properties of the biocompatible polymer. Support for this amendment can be found throughout the specification, such as on page 38, lines 1-12.

In light of the amendments and argument presented above, the Applicants respectfully request the withdrawal of the rejection of claims 1-5, 7 and 10-23 under 35 USC § 112¶2.

## RESPONSE TO CLAIM REJECTIONS UNDER 35 USC § 102(e)

Claims 1-5 and 10-18 are rejected as being anticipated by US Patent No. 6,537,585. The Examiner asserts that “[a]lthough ‘585 does not disclose all the characteristics and properties of the composition disclosed in the present claims, based on the substantially identical process using identical components, the Examiner has a reasonable basis to believe that the properties claimed in the present invention are inherent in the compositions disclosed by ‘585.”

Solely in the interest of expediting prosecution, and in no way conceding to the Examiner's position, claim 1 has been amended to incorporate the limitation of claim 19 (i.e. that the claimed method further comprise the step of treating said patient with electromagnetic radiation). In light of the amendment to claim 1, claim 19 has been canceled. Importantly, US Patent No. 6,537,585 does not the step of treating a patient with electromagnetic radiation. Accordingly, the Applicants respectfully request the Examiner withdraw the rejection of claims 1-5 and 10-18 under on 35 U.S.C. § 102(b) based on US Patent No. 6,537,585.

### **RESPONSE TO CLAIM REJECTIONS UNDER 35 USC § 103(a)**

Claims 1-5, 7 and 10-23 are rejected as being unpatentable over US Patent No. 5,651,986 (the '986 patent) in view of US Patent No. 6,166,173 (the '173 patent).

Solely in the interest of expediting prosecution, and in no way conceding to the Examiner's position, claim 1 has been amended to require that the antineoplastic agent is released from the biocompatible polymer at a constant rate. Support for this amendment can be found throughout the application, such as, for example, on page 94, lines 24-25. Importantly, neither the '986 patent nor the '173 patent teach or suggest constant release of an antineoplastic agent from a biocompatible polymer. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection for obviousness of claims 1-5, 7 and 10-23 under on 35 U.S.C. § 103(a) based on 5,651,986 in view of US Patent No. 6,166,173.

### **INFORMATION DISCLOSURE STATEMENT**

The Applicants appreciate the Examiner reviewing the references cited on Information Disclosure Statement submitted on October 12, 2004. The Applicants note that the Examiner has indicated that reference CF (the International Search Report for PCT/US03/000564) was not considered because it has "not published". However, the Applicants believe the International Search Report did publish on November 6, 2003. The Applicants respectfully request that the Examiner consider the cited International Search Report.

## **FEES**

The Applicants believe that no fees are required in connection with the filing of this Response. Nevertheless, the Commissioner is hereby authorized to charge any fees due in connection with the filing of this Response to our Deposit Account, No. **06-1448**, Reference **GPT-030.01**.

## **CONCLUSION**

The Applicants believe that the pending claims are in condition for allowance. If a telephone conversation with Applicants' Agent would expedite prosecution of the above-identified application, the Examiner is urged to contact the undersigned.

Respectfully submitted,  
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